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Attorneys for Plaintiff

Antonio Lopez, Johanna Lopez, & S.L. by and through his guardian ad litem
Rocio Flores

**UNITED STATE DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANTONIO LOPEZ, individually;
JOHANNA LOPEZ, individually;
M.R., by and through his guardian ad
litem, April Rodriguez, individually
and as successor in interest to
Brandon Lopez; B.L. and J.L., by and
through their guardian ad litem
Rachel Perez, individually and as
successors in interest to Brandon
Lopez; S.L., by and through his
guardian ad litem, Rocio Flores,
individually and as successor in
interest to Brandon Lopez,,

Plaintiff,

vs.

Case No.: 8:22-cv-01351-JVS-ADS

*(Honorable James V. Selna; Magistrate
Judge Autumn D. Spaeth)*

**EX PARTE PETITION TO
APPROVE MINOR'S
COMPROMISE FOR MINOR
PLAINTIFF S.L.**

CITY OF ANAHEIM, a municipal corporation; CITY OF SANTA ANA, a municipal corporation; DAVID VALENTIN, individually and in his official capacity as the Chief of Police for the CITY OF SANTA ANA Police Department; JORGE CISNEROS, individually and in his official capacity as the Chief of Police for the CITY OF ANAHEIM Police Department; PAUL DELGADO, individually and in his official capacity as an officer for the CITY OF ANAHEIM Police Department; BRETT HEITMAN; KENNETH WEBER, individually and in his official capacity as an officer for the CITY OF ANAHEIM Police Department; BRETT HEITMAN; CAITLIN PANOV, individually and in her official capacity as an officer for the CITY OF ANAHEIM Police Department; BRETT HEITMAN, individually and in his official capacity as an officer for the CITY OF ANAHEIM Police Department; BRETT HEITMAN; DOES 1-10, individually and in their official capacity as law enforcement officers for the CITY OF ANAHEIM Police Department and CITY OF SANTA ANA Police Department,,

Defendants.

TO THE HONORABLE COURT:

PLEASE TAKE NOTICE Minor Plaintiff S.L., by and through his guardian ad litem Rocio Flores, individually and as successor-in-interest to Decedent Brandon Lopes hereby moves this ex parte Court for an Order approving the settlement of his claims and distribution of his settlement funds on the grounds that counsel has complied with all procedural requirements pursuant to California Rule of Court 7.950 and 7.951, the net recovery for S.L. is fair and reasonable, and Counsel's fees and costs are reasonable. Plaintiffs' counsel and petitioner thus respectfully requests that the Court approve the below-described distribution of the settlement proceeds.

1 This Petition is based on this ex parte petition, the memorandum of points and
 2 authorities, the Declaration of Lena P. Andrews (hereinafter “Andrews Decl.”) and
 3 exhibits attached thereto; and the concurrently filed Proposed Order.

4
 5 **EX PARTE PETITION TO APPROVE MINOR’S COMPROMISE FOR**
 6 **MINOR PLAINTIFF S.L.**

7 Plaintiff S.L., by and through his guardian ad litem Rocio Flores, hereby
 8 brings this ex parte application for approval of the settlement between Plaintiff
 9 S.L. and the City of Anaheim and the proposed distribution as contained herein.

10 **I. DISCUSSION**

11 District courts have a special duty, derived from Federal Rule of Civil
 12 Procedure 17(c), to safeguard the interests of litigants who are minors. In the
 13 context of proposed settlements in suits involving minor plaintiffs, this special duty
 14 requires a district “court [to] conduct its own inquiry to determine whether the
 15 settlement serves the best interests of the minor.” *Dacanay v. Mendoza*, 573 F.2d
 16 1075, 1080 (9th Cir. 1978); *see also Salmeron v. United States*, 724 F.2d 1357,
 17 1363 (9th Cir. 1983) (holding that “a court must independently investigate and
 18 evaluate any compromise or settlement of a minor’s claims to assure itself that the
 19 minor’s interests are protected, even if the settlement has been recommended or
 20 negotiated by the minor’s parent or guardian ad litem.”).

21 Although the district court has a special duty to safeguard the interests
 22 of minor plaintiffs, that duty requires only that the district court
 23 determine whether the net amount distributed to each minor plaintiff in
 24 the proposed settlement is fair and reasonable, without regard to the
 25 proportion of the total settlement value designated for adult co-
 26 Plaintiffs and contracted by them with Plaintiffs’ counsel. If the net
 27 recovery of each minor plaintiff under the proposed settlement is fair
 and reasonable, the district court should approve the settlement as
 proposed.

1 *Robidoux v. Rosengren*, 638 F.3d 1177, 1179 (9th Cir. 2011).

2 Local Rule 17-1.3 provides that “[i]nsofar as practicable, hearings on petitions
3 to settle, compromise or dismiss a claim in an action involving a minor or
4 incompetent person shall conform to California Code of Civil Procedure Section 372
5 and California Rule of Court 3.1384.” These code sections refer to the requirement
6 of court approval and incorporate other rules requiring disclosure of various
7 pertinent facts. California Rule of Court 3.1384 provides that “[a] petition for court
8 approval of a compromise or covenant not to sue under Code of Civil Procedure
9 section 372 must comply with rules 7.950, 7.951, and 7.952.”

10 Pursuant to Local Rule 17-1.3 and applicable State of California rules,
11 Plaintiff V.R., by and through her guardian ad litem, ROCIO FLORES makes the
12 following disclosures:

13 1. Petitioner is Rocio Flores, guardian ad litem to minor Plaintiff S.L.
14 Plaintiff S.L. is represented by Burris, Nisenbaum, Curry & Lacy.

15 2. Minor Plaintiff S.L. is male. He was born in 2010. Plaintiff S.L. is the
16 biological child of decedent Brandon Lopez.

17 3. The nature of Plaintiff S.L.’s claims are set forth in the operative
18 complaint. Andrews Decl. at ¶ 2.

19 4. Medical treatment and medical billing are not relevant. Plaintiff S.L.
20 has not received medical treatment in connection with this case. Andrews Decl. at ¶
21 3.

22 5. Minor Plaintiffs S.L., B.L., J.L., and M.R. and Defendants Officers and
23 the City of Anaheim reached a settlement in this matter. The total settlement for this
24 matter is in the amount of \$5,800,000, inclusive of all costs and attorney’s fees.
25 Andrews Decl. at ¶ 4.

26 6. The minor Plaintiffs, by and through their respective guardian ad
27 litem, have agreed to even apportionment of the total amount between the four

1 minor Plaintiffs. Thus, Minor Plaintiff S.L.'s gross settlement amount shall be
 2 \$1,450,000, equal to 25% of the total settlement. Andrews Decl. at ¶ 5.

3 7. Burris, Nisenbaum, Curry & Lacy hereby request attorney's fees in the
 4 amount of 33.33% of the total gross settlement to Minor Plaintiff S.L., equaling
 5 \$483,333.33, pursuant to the contingency agreement between Minor Plaintiff S.L.,
 6 by and through his guardian ad litem Rocio Flores, and Burris, Nisenbaum, Curry &
 7 Lacy LLP. Andrews Decl. at ¶ 6.

8 8. The minor Plaintiffs, by and through their respective guardian ad
 9 litem, have agreed to even apportionment of the total costs between the four minor
 10 Plaintiffs. Andrews Decl. at ¶ 7. The total costs expended by counsel in the course
 11 of litigation for all four Minor Plaintiffs in this matter is \$14,573.95. (Andrews Decl.
 12 ¶ 8). Thus, Minor Plaintiff S.L. shall bear \$3,643.49 in litigation costs. Id.

13 9. Minor Plaintiff S.L. will thus receive a net settlement in the amount of
 14 \$963,023.18. Andrews Decl. at ¶ 9.

15 10. Minor Plaintiff S.L., by and through her Guardian ad Litem and counsel
 16 of record, request this Court approve the below tax-free structured settlement for the
 17 entire net settlement amount, \$963,023.18, through Melissa Baldwin of Baldwin
 18 Settlements. Disbursements shall be made periodically after Plaintiff S.L. comes of
 19 age in accordance with the schedule outlined in Exhibit A, attached to Andrews Decl.

20 11. The annuity check will be made payable to Met Life Assignment
 21 Company, Inc. (hereinafter referred to as "Assignee") which will provide the
 22 following periodic payments in Exhibit A, Section A to be made by Metropolitan
 23 Tower Life Insurance Company, (hereinafter referred to as "Annuity Carrier") rated
 24 A+ Class XV by A.M. Best Company.

25 12. Periodic Payments payable to Plaintiff S.L.:

26 \$35,000.00 Payable semi-annually guaranteed for 4 years, beginning on
 27 09/03/2028 with last guaranteed payment on 03/03/2032

1 \$40,000.00 Lump Sum Payment guaranteed on 09/03/2032

2 \$50,000.00 Lump Sum Payment guaranteed on 09/03/2034

3 \$75,000.00 Lump Sum Payment guaranteed on 09/03/2036

4 \$175,000.00 Lump Sum Payment guaranteed on 09/03/2038

5 \$1,180,000.00 Lump Sum Payment guaranteed on 09/03/2040

6 Exhibit A, attached Andrews Decl.

7 13. The Defendant will execute a "qualified assignment" within the
 8 meaning of Section 130(c), of the Internal Revenue code of 1986, as amended, to
 9 Assignee, of the Defendant's liability to make the periodic payments described in
 10 paragraph (A) herein. Such assignment, if made, shall be accepted by the Plaintiff
 11 without right of rejection and shall completely release and discharge the Defendant
 12 from such obligations hereunder as are assigned to Assignee. Exhibit A, attached
 13 Andrews Decl.

14 14. The Defendant shall have the right to fund its liability to make periodic
 15 payments by purchasing a "qualified funding asset", within the meaning of Section
 16 130(d) of the Code, in the form of an annuity policy from the Annuity Carrier.
 17 Exhibit A, attached Andrews Decl.

18 15. The obligation assumed by Assignee with respect to any required
 19 payment shall be discharged upon the mailing on or before the due date of a valid
 20 check or via wire transfer, in the amount specified above. Exhibit A, attached
 21 Andrews Decl.

22 16. The Plaintiff hereto expressly understands and agrees that upon the
 23 qualified assignment being made by the Defendant to Assignee as authorized by this
 24 agreement, all of the duties and responsibilities to make the periodic payments
 25 otherwise imposed upon the Defendant by this agreement shall instead be binding
 26 upon Assignee, and the Defendant shall be released from all obligations to make said
 27 periodic payments, and Assignee shall at all times remain directly and solely

1 responsible for and shall receive credit for all such payments made to Plaintiff. It is
2 further understood and agreed that, upon such a qualified assignment, Assignee
3 assume all of the duties and responsibilities of the Defendant to make the periodic
4 payments. Exhibit A, attached Andrews Decl.

5 17. Payments hereunder cannot be accelerated, deferred, increased or
6 decreased by the Plaintiff and/or Assignee and no part of the payment(s) called for
7 herein or any assets of the Defendant and/or Assignee is to be subject to execution
8 of any legal process for any obligation in any manner. Furthermore, the Plaintiff
9 shall not have the power to sell or mortgage or encumber the same, or any part
10 thereof, anticipate the same, or any part thereof, by assignment or otherwise. Exhibit
11 A, attached Andrews Decl.

12 18. The Assignee shall be the owner of the annuity policy or policies, and
13 shall have all rights of ownership. The Assignee will have the Annuity Carrier mail
14 payments directly to the Plaintiff. The Plaintiff shall be responsible for maintaining
15 the currency of the proper mailing address and mortality information to Assignee.
16 Exhibit A, attached Andrews Decl.

17 19. Petitioner Rocio Flores has reviewed the proposed settlement and
18 structured disbursement schedule in Exhibit A. Andrews Decl. at ¶ 10.

19 20. Petitioner understands that if the compromise proposed in this petition
20 is approved by the Court and is consummated, Plaintiff S.L. will be forever barred
21 from seeking any further recovery of compensation even though Plaintiff S.L.'s
22 injuries and losses might in the future appear to be more serious than they are now
23 thought to be. Petitioner is informed and believes that Plaintiff S.L. has made
24 sufficient recovery so as to justify the resolution of this matter in accordance with
25 the terms of the settlement agreement. Petitioner recommends the compromise and
26 the proposed distribution to Plaintiff S.L. to the Court as being fair, reasonable, and
27 in the best interest of Plaintiff V.R. and requests that the Court approve this

1 compromise settlement and make such other and further orders as may be just and
 2 reasonable.

3 21. Petitioner Rocio Flores has no claims against the Defendants or
 4 Plaintiff S.L.

5 22. California Welfare and Institutions Code Section 14124.73 does not
 6 apply. Andrews Decl. at ¶ 11.

7 23. This motion does not seek an order for payment of money to a special
 8 needs trust. Andrews Decl. at ¶ 12.

9 24. This petition was prepared by Burris, Nisenbaum, Curry & Lacy LLP,
 10 counsel for Minor Plaintiff S.L. in this action. DeWitt M. Lacy, Julia N. Quesada,
 11 and Lena P. Andrews, counsel of record for Minor Plaintiff S.L. Andrews Decl. at ¶
 12 13. Burris, Nisenbaum, Curry & Lacy is in agreement with the terms of this Petition.
 13 Id.

14 25. Plaintiff S.L.'s counsel also represent Plaintiffs Antonio Lopez and
 15 Johanna Lopez. Andrews Decl. at ¶ 14. Plaintiffs Antonio Lopez and Johanna Lopez
 16 are not parties to the subject settlement. Andrews Decl. at ¶ 15.

17 26. DeWitt M. Lacy, Julia N. Quesada, and Lena P. Andrews, hereby
 18 represent to the Court that they became involved in this case at the request of
 19 Plaintiffs, and have not received any compensation for their services in connection
 20 with this action from any person. Andrews Decl. at ¶ 16.

21 27. Petitioner and her counsel have made a careful and diligent inquiry and
 22 investigation to ascertain the facts relating to the subject incidents, the responsibility
 23 therefore, and the nature and extent of injury to the minor plaintiff, and fully
 24 understand that if the compromise herein proposed is approved by the Court and is
 25 consummated, said minor plaintiff will be forever barred and prevented from seeking
 26 any further recovery of compensation as against all Defendants in this action, even
 27

1 if said minor's losses and injuries might in the future prove to be more serious than
2 they are now thought to be.

3 28. Petitioner recommends this compromise settlement to the Court as
4 being fair, reasonable, and in the best interests of said minor plaintiff.

5 29. Defense counsel has no objection to the proposed distribution.
6

7 Dated: May 6, 2024

BURRIS, NISENBAUM, CURRY & LACY LLP

8
9 By: /s/ Lena Andrews

10 DeWITT M. LACY

11 JOHN L. BURRIS

12 JULIA N. QUESADA

13 LENA P. ANDREWS

14 Attorneys for Plaintiff,

15 Antonio Lopez, Johanna Lopez, &

16 S.L. by and through his guardian ad
17 litem Rocio Flores